

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

First Appeal No. 615 of 1986

1. Gangadhar Dattatraya Apte
2. Vasudeo Bapuji Gorambekar
since deceased by his heirs
and legal representatives
- i) Keshav Vasudeo Gorambekar
- ii) Madhav Vasudeo Gorambekar

both residing at Amnapur Via
Kirloskarwadi, Tal. Tasgaon
Dist. Sangli

..Appellants

vs.

1. Narayan Ramchandra Apte
since deceased by his heirs
and legal representatives:
- a) Shri suresh Narayan Apte
near Londhe Colony, Asawati
Plot, Opp: Tasgaon Maruti
Pandharpur Road, Miraj, Dist.
Sangli.
- b) Mrs. Neela Purshottam Kelkar
Veer Savarkar Nagar, Ambarnath
House, No. 589, Donewadi Rasta
at and post Vagani (W) Dist.
Thane
- c) Mrs. Madhavi Madanmohan Gokhale
At & Post Shiraval, near S.T.
Stand Laxmi Nagar, Juna Mahad
Pandharpur Road, Tal. & Dist.
Satara.
- d) Mrs. Padmavati Chintamani Date
Nikhil Apart. 3rd floor, At & Post
Vishram Baug, Taluka Miraj
Dist. Sangli
- e) Mrs. Na, lini Prabhakar Londhe
Govt. Narses Quarters Bldg. No. 1
Block No. 1, Pandharpur Road
Miraj, Sangli
- f) Mrs. Vidya Shrikant Datar
Shaniwar Peth, H. No. 379, 4th floor
near SNTD Highschool, Pune.

- g) Mrs.Neeta Haribhau Gokhale
Manisha Nagar, Dvidal Bungalow
at & Post Pandharpur, Solapur
- h) Mrs.Rajashri Ramesh Bhagawat
near S.T.Stand Power House,near
Raigad Bungalow, Chiplun
Ratnagiri
2. Charity Commissioner,
Bombay, Dharmadaya Bhavan
Worli, Bombay 400 018
3. Suresh Narayan Apate ..Respondents
- Smt.Anjali Helekar for appellants.

CORAM: S.B.MHASE J.
14th July, 2006

ORAL JUDGMENT:

1. This appeal is directed against the judgment and decree passed in Reg.Civil Suit No.1 of 1966 by Additional District Judge, Sangli on 19th April, 1986 and thereby dismissed the above referred suit filed by the appellants.
2. The said suit was filed by the appellants under section 50 of the Bombay Public Trust Act, 1950 after having obtained the consent of the Charity Commissioner, respondent no.2, under sec.51 of the Bombay Public Trust Act, 1950. This suit was filed initially by two persons, namely, appellant no.1 and one Ganesh Shripat Kulkarni. However, it

appears that during pendency of the said suit, original defendant no.2 Ganesh Shripat Kulkarni died and, therefore, the name of Vasudeo Bapuji Gorambekar was brought on record but no necessary changes in the pleadings were made. Therefore, when for the first time the matter was decided by the Asstt.Judge, Sangli on 30th June, 1975 the suit was dismissed having found that plaintiff no.2 Vasudeo Gorambekar was mere signatory to the suit and therefore he is not a person interested in the suit and since the suit is not by two interested persons, ultimately it was dismissed. However, the said decree was challenged by the appellants and after allowing certain amendments in the plaint, this Court remanded the matter. Those amendments were effected in respect of Vasudeo Bapuji Gorambekar who is/was appellant no.2 before this Court and who expired during the pendency of the appeal and his legal representatives have been brought on record.

3. Respondent no.1 is the original defendant no.1 and respondent no.2 Charity Commissioner is original defendant no.2 while respondent no.3 Suresh is the son of respondent no. 1 Narayan and was added in the above referred suit during the

pendency of the suit since it was claimed by respondent no.1 that his son Suresh is tenant of the Trust land. For the sake of convenience hereinafter the appellants are referred to as the plaintiffs while the respondents are referred to as the defendants respectively. The suit pertains to the Trust and Trust property of "Shri Krishnabai Deosthan" situated at Amnapur, Taluka Tasgaon, District Sangli bearing PTR No.SSA-757. The said trust owns the property survey no.503 admeasuring 15 Acres and 19 gunthas assessed at Rs.33 annas 6 Rs.5/- being Judi. It is a class III Devasthan Inam Land situated at Amnepur, Taluka Tasgaon, District Satara. The said Trust was registered on 6th March, 1954. The Trust has come into existence as a result of sanad dated 31st January, 1962 given by the family of Patwardhan who then were the King and Sansthanik of the said area. The mode of succession trusteeship as revealed in the enquiry under the Trust Act was hereditary and, therefore, defendant no.1 is inheridatory trustee of the said Krishnabai Devasthan Trust. It appears that initial grant was in favour of the grand father of defendant no.1.

4. So far as this Devasthan is concerned there is

no temple of Krishnabai. It appears that on a specified date namely Chaitra Shuddha 14 of every year the place of statue of Krishnabai was being prepared worship and after having Samaradhana the said place the statute was immersed into the water of Krishna River. It further appears that the grant was given by the said Patwardhan for the said worship to offer food to the brahmins on the said occasion and so far as this part is concerned, there is no dispute between the parties. It further appears that there were enquiries conducted under sections 37 and 39 of the Bombay Public Trust Act, 1950 in respect of the said Trust bearing No.5 of 1964 and 6 of 1964 and it was observed that the loss to the Trust property was caused to the tune of Rs.5000/- and Rs.1,200.75 paise and the defendant is liable for the same, however, no further orders were passed and the Joint Charity Commissioner by order dated 21st October, 1970 dropped further proceedings since according to him in respect of the same subject matter the above referred suit was/is pending and the Charity Commissioner is a party to the said suit.

5. It further appears that during the pendency of the suit since defendant no.3 claimed that he is a

tenant of the suit property issue to that effect was framed and was referred to the tenancy authorities under sec.65-A of the Bombay Tenancy and Agricultural Lands act, 1948. However, the said issue was finally adjudicated as against defendant no.3 and it is held that defendant no.3 is not a tenant of the suit property and the issue raised to that effect is ultimately negatived.

6. As stated above, initially the suit was dismissed since it was found that the suit has not been filed by two interested persons as required under sections 50 and 51 of Bombay Public Trust Act, 1950. However, the said defect was cured and this Court remanded the matter. After remand also again issue no.1A was maintained namely whether the plaintiffs prove that plaintiff no.2 is an interested person in the trust. The said issue has been answered in negative and thereafter again it is held that the suit is not by two interested persons which ultimately resulted into dismissal of the suit. It is to be noted that after the remand there was pleadings inserted to the effect that plaintiff no.2 is worshipping the said deity Krishnabai and has produced in the festival of the said Krishnabai and being the beneficiary of the

said Trust he is interested in the said Trust. The said statement was also recorded. However, unfortunately the Additional District Judge found that this is not sufficient to hold that he is a person having interest in the Trust. In fact, the definition of the person having interest in the

Trust includes the beneficiaries of the said Trust. Plaintiff No.2 being the devotee of the said Krishnabai and since he was taking part in samaradhana he was very much interested in the said Trust. The finding given by the Additional District Judge, Sangli to that effect deserves to be set aside and further it is submitted that the said issue was not open in view of the fact that the defect in the suit was cured before the High Court and the suit was remanded for trial.

7. There is one more reason why such an issue cannot arise in a suit under sec.50 of the B.P.T.Act, 1950. It is to be noted that before instituting the suit under sec.50, it is obligatory for the plaintiff to obtain a permission under sec.51 of the B.P.T.Act, 1950 to file the suit. Such application is required to be filed by two interested persons and, therefore, the said

proceedings are contested proceedings and the defendants are called upon in such a proceeding as to why such permission to institute the suit shall not be granted. Thereafter the issue as to whether the permission is being sought by two interested persons and/or proposed draft of the suit is being filed by two interested persons is the question to

be considered by the Charity Commissioner when he considers as to whether the permission is to be granted to the plaintiffs to file the suit or not. Once that permission is granted it concludes the aspect that the proceedings under sec.50 and 51 are being filed by two interested persons and the same issue between the same parties will not be permissible in a suit which is filed after having granted permission by the Charity Commissioner under sec.51 of the B.P.T.Act, 1950. The proper remedy, under these circumstances, is to file appropriate proceedings before the Maharashtra Revenue Tribunal as provided under sec.51 challenging the order of the Charity Commissioner granting permission to institute the suit and, therefore, it is held that this issue was unwarranted and even if it arises it has to be answered in favour of the plaintiffs holding that

plaintiff no.2 was equally interested person like that of plaintiff no.1. Therefore, that part of the judgment of the Additional District Judge deserves to be set aside.

8. Another challenge by the plaintiffs was that there is an Utstava namely felicitation of Krishnabai. However, that issue is not open for challenge because when an enquiry under sec.19 of the B.P.T.Act, 1950 was conducted by the Asstt.Charity Commissioner to register the Trust in the year 1954, initially the object of the Trust was decided as Utstava Samaradhana on the deity of Krishnabai as is reflected from column 5 of the P.T.R.extract which at Exh.5. However, it further appears that defendant no.1 challenged the said part of the judgment by filing appropriate appeal before the Charity Commissioner and the Charity

Commissioner thereafter has set aside the finding in respect of the object and thereafter the objects were amended as "Samadharana" of the deity of Shrikrishnabai and thus a change was effected in view of order passed in Appeal no.75 of 1954 decided on 13th September, 1959. The result is that the Utsava namely felicitation and/or fare of

the said Krishnabai was not the object approved by the Charity Commissioner. That enquiry is a public enquiry and order passed in an enquiry under sec.19 is the judgment in law and, therefore, those entries were effected in the year 1959 and were not challenged thereafter till filing of the suit. Therefore, the contention of the plaintiffs that one of the objects of the Trust was to have Utstava/Fare was a misconceived and the District Judge has rightly rejected the said contention.

9. There was another objection and the prayer by the plaintiffs that the said Apte Wada of village Amnapur be declared as a Trust property of the said Shri Krishnabai Deosthan since initially the activities of preparing the deity of Shri Krishnabai and worshiping and giving food to brahmins was carried at the said place. However, it requires to be mentioned that the said Apte Wada is not shown to be the trust property in the Public Trust Register and thus in enquiry under sec.19 of 4the said Act it was never held that the said Apate Wada is the Trust property. It is further seen that during the pendency of the suit the plaintiff has made an application to the Charity Commissioner under sec.22 for registering the said Apte wada as Trust Property. However, it is a fact on record

that the said application No.12 of 1966 was rejected and the judgment of the Asstt.Charity Commissioner dated 31st January, 1967 is at Exh.107 and thus the contention of the plaintiff that Apte wada is a trust property of Krishnabai Deosthan fails and the finding recorded by the Additional District Judge is proper one. The next contention raised by the plaintiffs is that utstava and samaradhana are being carried out by the defendants for more than 20 years. As against defendant no.1 came with the contention that there was no question of holding felicitation or fare so far as samaradhana is concerned and that he is performing the function of Samaradhana at his home at Miraj where he is presently residing and, therefore, he claimed that the activities of the Trust are being carried out and there is no substance in the contention of the plaintiff. So far as holding of felicitation is concerned, that contention of the plaintiffs stands rejected in view of earlier discussion and the objects of the Trust were modified as discussed above in the year 1959 in view of decision of Appeal No.75 of 1994 decided by the Charity Commissioner. So far as preparing the deity of Shri Krishnabai and holding of samaradharana was concerned, the defendant says

that he is carrying out that activity. The plaintiffs have also not brought any evidence to demonstrate that the defendant is not carrying out the said activity as per the object of the Trust. The whole thrust of the evidence of the plaintiff is on holding fare or felicitation and, therefore, this Court also found that the finding recorded by the first Appellate Court that Samadharana is being carried out by the defendant at his place at Miraj and the object of the Trust is being looked after and that finding is proper and requires no interference. The main contention of the plaintiff is that loss has been caused to the said Trust as a result of the act of the defendants. However, it is interesting to note that so far as the income of the Trust property is concerned no evidence has been brought on record except stating that the income of the said property is Rs.2000/- per year and loan of Rs.9500/- has raised by mortgaging the said land. It is pertinent to note that the said land is irrigation land and the plaintiff has examined P.W.2 Sitaram . The said witness was the employee of Sangli Sugar Karkhana who has deposed that the said factory has received the sugar cane from the said land. However, it is interesting to note that these 3-4 sentences have been asked in

the cross examination and no further questions about the objects of the said karkhana or the payment made by the said sugar karkhana have been brought on record. Under these circumstances his evidence is short of particulars in respect of the income of the said property and the defendant's counsel has rightly not cross examined the said witness. It is further to be noted that witness no.3 was examined by the plaintiffs. However, that witness only stated that he works as agent with District Central Cooperative Bank, Ramanandnagar Branch and that defendant no.1 was granted loan of Rs.9500/- in 1969 since the water supply scheme was constructed on the trust land along with other agriculturists. It transpires from the cross examination of the said witness that out of the said amount of Rs.9500/- only Rs.3500/- were outstanding from defendant no.1 on that day. This witness also was not of any help to prove the income of the Trust. The plaintiff has examined P.W.4 to demonstrate that the income from the said land is 5 maunds of jawar per acre. However, he is younger brother of plaintiff no.2. He has no personal knowledge about the income of the Trust property. Plaintiff's witness no.5 is one Shri Maruti Jadhav and he speaks about the Utstava to be

performed, however, he does not speak about the income of the trust property. He only states that the trust property is good quality land. He has stated defendant no.1 cultivated the land after engaging labours. He stated that he do not know where defendant no.1 resides. What is pertinent to note that basically there is burden on the plaintiffs to prove a particular income being taken by defendant no.1 from the Trust property and thereafter misappropriated or mismanaged the said fund for his personal use and/or not for the purpose and object of the said Trust. However, nothing has been brought on record by the plaintiffs and, therefore, finding recorded by the Additional District Judge appears to be proper one. Ultimately, what we find that there is no substance in the appeal.

10. However, while parting with the judgment, it requires to be mentioned that the Trust admittedly exists and it is a public trust. Initially attempt was made to show that the defendant no.3 is a tenant of the said property and thus the property of the Trust was tired to encumber upon by defendant nos.1 and 2. It further appears that the Trust property is irrigated land and the crop like

sugar-cane is being taken and, therefore, even though the plaintiffs have failed to prove the income of the said Trust and misappropriation and mismanagement of the Trust is proved yet the claim made by the defendant that he is getting only Rs.250/- by way of income appears to be improper one and, therefore, appropriate enquiry into the income of the said Trust is necessary. It is further to be noted that since defendant nos.1 and 3 are not residing at Amnepur and cultivating the land, they may not be getting proper income from the said property. If the statement of defendants that they are only getting Rs.250/- per year from the suit is accepted that itself shows that the suit property is not properly managed in view of the fact that it is the agricultural land. It cannot be forgotten that the officers of the Charity Commissioner observed that the Trust is not properly maintained but they refrained to proceed with the further steps under the Trust Act since the suit was going on but, however, presently the suit is dismissed and, therefore, it will be open for them to proceed in accordance with the B.P.T.Act, 1950 to enquire and institute the appropriate enquiry against defendant nos. 1 and 3. Under these circumstances, it is observed that

it will be proper on the part of the Charity Commissioner to take appropriate steps and if necessary to frame a scheme under sec.50A of the B.P.T.Act so that the said property can be properly managed and income of the said Trust can be secured for the object of the Trust and if sufficient funds are available even enlarge the objects of the said Trust. With these observations the first appeal is hereby dismissed.

(S.B.MHASE J.)